

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: NATIONAL)
PRESCRIPTION) JUDGE POLSTER
OPIATE LITIGATION,)
)
APPLIES TO ALL CASES) Cleveland, Ohio
)
) Civil Action
) Number 1:17MD02804
)

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TRANSCRIPT OF PROCEEDINGS HAD BEFORE
THE HONORABLE DAN AARON POLSTER
JUDGE OF SAID COURT,

ON THURSDAY, JANUARY 10, 2019

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Official Court Reporter: Shirle M. Perkins, RDR, CRR
U.S. District Court
801 West Superior, #7-189
Cleveland, OH 44113-1829
(216) 357-7106

Proceedings recorded by mechanical stenography; transcript
produced by computer-aided transcription.

1 THURSDAY SESSION, JANUARY 10, 2019, AT 12:00 P.M.

2 DEPUTY CLERK: Thank you all for holding I'm
3 going to put you on with Judge Polster. Thanks very much.

4 THE COURT: All right. Good afternoon,
12:05:11 5 everyone.

6 MR. WEINBERGER: Judge, this is Pete.

7 THE COURT: Yes, Pete?

8 MR. WEINBERGER: Also on the line, who also is
9 present I should say, is Jonathan Blanton, representing
12:05:23 10 Governor-elect DeWine. And thank you.

11 THE COURT: All right.

12 Yeah, I'm glad -- I'm glad Jonathan is staying on. A
13 credit to him and our Governor-elect, the new AG. All
14 right.

12:05:46 15 Well, I should say we have a Court Reporter. That was
16 the request of some of the parties, that we have one. I
17 think it's probably a good idea. So we have a Court
18 Reporter.

19 This is our regularly scheduled status conference.
12:06:06 20 Thanks to everyone for the status report, which I've
21 reviewed. That -- a lot of pages in the status report was
22 devoted to IMS data, and I understand that Special Master
23 Cohen spent a good deal of time with everyone yesterday
24 dealing with that. So I'm not going to take that up.

12:06:43 25 There are a number of -- and also I think he spent a

1 fair amount of time working on the SOM, S-O-M matter, so I'm
2 not going to address that any further.

3 There are a few things I do want to address. First, I
4 had directed that the CMO for the Track 2 cases be submitted
12:07:20 5 jointly by January 15th. I understand the parties have
6 requested some additional time. So I'm extending that date
7 to February 4th.

8 There's been some additional discovery, some
9 submissions on the BIO Immersion Trip. I think everything
12:07:48 10 has been produced that's supposed to be produced. If the
11 Plaintiffs want to -- want the Court to -- feel the Court
12 should take any further action, you need to file something
13 and I'll consider it. My personal view is that while this
14 was a very bad idea by whoever thought it up, I don't think
12:08:08 15 any serious harm was done. But, certainly we're not going
16 to have anything anywhere close or like that in the future.
17 Everyone understands it was a very bad idea and it was
18 poorly executed so -- but if the Plaintiffs think that I
19 need to do something further, you got to file something.

12:08:29 20 There was a motion for leave to file a motion for
21 sanctions that a number of Defendants filed wanting me to
22 sanction the lawyers and Attorney General DeWine, who made
23 statements on last month's 60 Minutes program. I watched
24 the program, I've read the transcript. I wasn't happy to
12:09:04 25 see and hear what I saw and heard. It was right up to the

1 edge of where anyone should go, but I'm not going to issue
2 any more orders and I'm not going to grant leave to file
3 that, but -- I'm not issuing any orders but I want to make
4 clear that no lawyers and no clients are to be discussing or
12:09:31 5 characterizing documents that have been filed subject to a
6 protective order, and no one is to be maligning the
7 character of anyone else, and no one is to be discussing,
8 even in general terms, settlement discussions, other than to
9 say everyone's working hard, which is what all I've been
12:09:53 10 saying.

11 And I don't want to see anything more like I saw on 60
12 Minutes, and I don't want to see anything on the Defense
13 side either. So everyone's going to be behaving
14 professionally. That goes for the lawyers or the clients.

12:10:09 15 There was a motion that was just filed to disqualify
16 one of the lawyers on the Defense side. I'm going to handle
17 that in the ordinary course. So our response will be due
18 January 23rd and a reply, January 30th. And then I'll
19 address it.

12:10:32 20 I believe at the last call, I said that Special Master
21 McGovern would be working with all counsel to come up with a
22 workable trial plan for the September trial, and Special
23 Master McGovern is redoubling his efforts to come up with
24 some -- with a trial that can -- that is manageable and
12:11:04 25 understandable and will be done within the time limits that

1 we've set, roughly three weeks.

2 I understand I had sort of a private meeting with Joe
3 Rice and Sheila Birnbaum, and I just asked them how things
4 are going in the MDL, and they said that everyone's working
12:11:31 5 hard, which I knew, but they both felt that Special Master
6 Cohen is overloaded with dealing with the privilege issue in
7 all its myriad forms, and they felt he needed additional
8 resources. So I'm going to confer with my team and figure
9 out a way to get him the additional resources he needs.

12:11:58 10 It obviously will be helpful to him and whomever else
11 is assigned to that task for everyone to work together and
12 put these issues in categories because no one has the time
13 or energy to go through thousands of documents one by one.
14 So you organize them in categories and say all right, these
12:12:23 15 are the issues that will be presented, and Special Master
16 Cohen will make an order. And if people want to appeal,
17 they can appeal it to me like we've been doing. But, we're
18 not going to be going through document by document several
19 thousand documents. So both sides need to work on that.

12:12:43 20 And I again want to emphasize I don't want to see any
21 overdesignation of privilege documents because if I -- if I
22 see that, I'm going to have to impose sanctions. Special
23 Master Cohen has power to impose them. And if he doesn't,
24 I'll have to. And I don't want to do that.

12:13:04 25 I thought the best time for our next call, unless

1 someone feels we need one sooner, I was going to propose
2 Wednesday, February 13th, at noon. We've set February 12th
3 and 13th for general meetings, whatever needs to be covered.
4 And it seems logical, as we've done this time, to have you
12:13:41 5 noon on the second day for another one of these calls. And
6 that would mean the status report would be due Monday,
7 February 11th, at noon.

8 Does anyone feel that's a problem or that we need to
9 have one sooner? If so, I can schedule one sooner. All
12:14:09 10 right.

11 Well then hearing no objections, that's what we'll
12 have.

13 Let me see if there was -- all right. Judge Ruiz is
14 working on the reports and recommendations on the dealing
12:14:43 15 with the motions to dismiss in the Tribe cases. We all
16 agree that would be the next focus, and he's working, he and
17 his crew are working on that.

18 The status report reflects on Page 10, the meeting
19 with the Court and representatives from the PBM Defendants.
12:15:05 20 On December 5th we had that meeting, and we scheduled
21 another meeting either February 12th or 13th. I'm still
22 working on the schedule, but just so everyone knows, the
23 second meeting will be February 12th or 13th.

24 Again, on Page 13 there, the Plaintiffs had filed a
12:15:29 25 motion for approval of a short form complaint. The

1 Defendants filed their opposition on January 14th. I need a
2 reply by the Plaintiffs by January 14th. I will encourage
3 the parties to try to work together on this. I -- and
4 figure out -- figure it out. But if not, Special Master
12:15:52 5 Cohen will issue a ruling on it promptly after the reply.

6 There's briefing on McKesson's motion to compel the
7 production of the Ohio Automated RX Reporting System.
8 What -- what's the next -- Plaintiffs filed their response
9 on January 5th, and I guess a reply will be filed shortly,
12:16:28 10 and we'll address that.

11 LAW CLERK: When?

12 MR. BLANTON: This is Jonathan -- (on phone
13 but inaudible.)

14 THE COURT: Well, John, when do you think you
12:16:46 15 will have those replies?

16 MR. BLANTON: I believe tomorrow, your Honor.

17 THE COURT: All right.

18 MR. BLANTON: My understanding.

19 THE COURT: All right. Well, then Special
12:16:56 20 Master Cohen will address that. Okay. And on Page 14 --

21 MR. CHEFFO: Excuse me, your Honor. This is
22 Mark. I'm just confused. Who is Jonathan?

23 THE COURT: Oh. Jonathan Blanton from the
24 State of Ohio because this was --

12:17:33 25 MR. BLANTON: That's by tomorrow and then

1 we'll file our reply.

2 THE COURT: All right. Maybe I had -- well,
3 I'm confused. You said McKesson filed the motion to compel
4 on December 31st. Plaintiffs filed the response on January
12:17:57 5 5th. All right. Then Ohio's going to file one by tomorrow,
6 the 11th, and then McKesson can file their reply.

7 When do you want to file your reply?

8 COUNSEL: Is five days okay?

9 THE COURT: Well, I'll give you a week. I'll
12:18:18 10 make it the 18th. All right?

11 COUNSEL: Thank you, your Honor.

12 THE COURT: Reply. McKesson will reply the
13 18th.

14 Looking at the -- the related State cases on Page 14,
12:18:33 15 the second one, Oklahoma versus Purdue, et al., is scheduled
16 for May 28th. It's my understanding that that trial is
17 going forward. What about the first one, West Virginia
18 versus McKesson, April 30th? Anyone know anything about
19 that?

12:18:53 20 MR. HOBART: Your Honor, this is Geoff Hobart
21 from Covington. That trial date is still on the calendar
22 but it's certainly going to be continued due to some issues
23 with the election in West Virginia. So that -- that case --

24 THE COURT: All right.

12:19:12 25 MR. HOBART: That trial date will be

1 continued.

2 THE COURT: Thank you. That's what I thought,
3 but the second one, that's -- that would likely be the first
4 trial of -- on these opioid matters. So I think that one's
5 going forward. Okay.

6 I think that that covers everything in the joint
7 status report and the other matters I have. Any questions
8 about the things we -- the things we've covered or anyone
9 wants to say anything further? All right.

10 Well, thank you. Again, I want to appreciate all the
11 hard work that all the lawyers on the phone and all the
12 other lawyers who are assisting you are putting in. This is
13 an extraordinarily difficult and complex set of cases. Now
14 more than 1500. And we have the best lawyers in the country
15 on all sides. I've got an exceptional team of Special
16 Masters. But, it's clearly taxing everyone. The size, the
17 complexity, the number of players, the overlap with the
18 State courts, but I appreciate everyone's hard work.

19 And with that, we are adjourned. Thank you.

20 COUNSEL: Thank you.

21 (Proceedings adjourned at 12:20 p.m.)

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

s/Shirle Perkins
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